IN THE

Supreme Court of the United States

October Term, 1971

No. 71-506

UNITED STATES OF AMERICA AND
FEDERAL COMMUNICATIONS COMMISSION,
Petitioners,

v.

MIDWEST VIDEO CORPORATION,
Respondent.

On Writ of Certiorari To
The United States Court of Appeals
For The Eighth Circuit

BRIEF FOR THE NATIONAL ASSOCIATION OF REGULATORY UTILITY COMMISSIONERS AS *AMICUS CURIAE*

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April 4, 1972

THE CASILLAS PRESS, INC.—1717 K Street, N. W.—Washington, D. C.—223-1220

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CITATIONS

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OPINIONS BELOW

The opinion of the United States Court of Appeals for the Eighth Circuit is reported at 441 F.2d 1322. The orders of the Federal Communications Commission are reported at 20 FCC 2d 201, 23 FCC 2d 825, and 27 FCC 2d 778.

QUESTION PRESENTED

Whether the rule of the Federal Communications Commission requiring community antenna television systems with 3,500 or more subscribers to originate programming is authorized by the Communications Act of 1934, as amended (47 U.S.C., Sec. 151 *et seq.*).

THE INTEREST OF THE NARUC AS *AMICUS CURIAE*

The National Association of Regulatory Utiliy Commissioners (NARUC) is a quasi-governmental nonprofit organization founded in 1889. Within its membership are the governmental bodies of the fifty States engaged in the regulation of carriers and utilities. The mission of the NARUC is to improve the quality and effectiveness of public regulation in America. More specifically, the NARUC contains the State officials charged with the duty of regulating communications within their respective States and, as such, they have the obligation to assure the establishment and maintenance of such communication service and facilities as may be required by the public convenience and necessity, and the furnishing of service at rates that are just and reasonable.

The States of Alaska[1], Connecticut[2], Hawaii[3], Illinois[4], Massachusetts[5], Nevada[6], Rhode Island[7] and

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[1] Alaska Statutes, Title 42, Chapter 05, Sec. 761.

[2] Connecticut General Statutes, Chapter 289, Secs. 16-330 through 16-333.

[3] Hawaii Revised Statutes, Chapter 269. See also Opinion of the Attorney General of Hawaii, No. 69-29, Dec. 2, 1969, CCH Utilities Law Reporter, Sec. 21, 206.

[4] Illinois Revised Statutes, Chapter 111-2/3, Sec. 10-3(b).

[5] Massachusetts General Laws, Chapter 116A.

[6] Nevada Revised Statutes, Sec. 711.010 *et seq.*

[7] Rhode Island General Laws, Secs. 39-19-1 through 39-19-8.

Vermont[8] have asserted the authority to regulate the local aspects of community antenna television (CATV) systems. This State action reflects a strong national trend at the State level to protect the consumer interest by certificating qualified applicants to provide CATV service, and regulating rates to CATV subscribers and quality of service. Such a State role has been expressly upheld by this Court in *TV Pix, Inc. v. Taylor*, 304 F. Supp. 459, aff'd 396 U.S. 556, 24 L. Ed. 2d 746, 90 S.Ct. 49 (1970).

The rule of the Federal Communications Commission (FCC) requiring CATV systems with 3,500 or more subscribers to originate programming conflicts with State and local governmental efforts to regulate these systems as common carriers. At the very least, the FCC's mandatory origination requirement preempts critical CATV system capacity which would otherwise be available for public use.

Accordingly, the decision by the Court of the issues in this case will be of paramount regulatory importance and will have a substantial affect on the ability of State agencies to protect the public interest in proceedings involving CATV service. Therefore, the members of the NARUC, as government regulators, are vitally concerned with these issues and the precedents which will be established by their resolution.

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[8] Vermont Statutes Annotated, Title 30, Chapter 13.

ARGUMENT

I. THE FCC'S MANDATORY ORIGINATION RULE IS BEYOND THE SCOPE OF THE COMMUNICATIONS ACT, VIOLATES THE FREEDOM OF SPEECH GUARANTEED BY THE FIRST AMENDMENT AND THE DUE PROCESS GUARANTEED BY THE FIFTH AMENDMENT TO THE CONSTITUTION, AND CONFLICTS WITH NATIONAL ANTITRUST POLICY.

This case arises from an order of the FCC adopting a rule requiring CATV systems with more than 3,500 subscribers, as a condition for the carriage of television broadcast signals, to originate programming. The Court of Appeals held that the FCC lacks statutory authority to require program origination.

A. The FCC's Rule Exceeds Statutory Authority.

The FCC, by this rule, seeks to engineer a profound change in the nature of CATV service by transforming the larger CATV systems from mere transmitters of programming to originators of it.

This Court in *Fortnightly Corporation v. United Artists Television*, 392 U.S. 390, 20 L. Ed. 2d 1176, 88 S.Ct. 2084 (1968), clearly articulated the difference between broadcasters, who originate programming, and CATV systems, who do not. The Court, in absolving CATV systems from copyright liability, held that:

> . . . Broadcasters perform. Viewers do not perform. Thus, while both broadcaster and viewer play crucial roles in the total television process, a line is drawn between them. One is treated as active performer; the other, as passive beneficiary.
>
> When CATV is considered in this framework, we conclude that it falls on the viewer's side of the line. Essentially, a CATV system no

more than enhances the viewer's capacity to receive the broadcaster's signals; it provides a well-located antenna with an efficient connection to the viewer's television set. It is true that a CATV system plays an "active" role in making reception possible in a given area, but so do ordinary television sets and antennas. CATV equipment is powerful and sophisticated, but the basic function the equipment serves is little different from that served by the equipment generally furnished by a television viewer. If an individual erected an antenna on a hill, strung a cable to his house, and installed the necessary amplifying equipment, he would not be "performing" the programs he received on his television set. The result would be no different if several people combined to erect a cooperative antenna for the same purpose. The only difference in the case of CATV is that the antenna system is erected and owned not by its users but by an entrepreneur.

The function of CATV systems has little in common with the function of broadcasters. CATV systems do not in fact broadcast or rebroadcast. Broadcasters select the programs to be viewed; CATV systems simply carry, without editing, whatever programs they receive. Broadcasters procure programs and propagate them to the public; CATV systems receive programs that have been released to the public and carry them by private channels to additional viewers. We hold that CATV operators, like viewers and unlike broadcasters, do not perform the programs that they receive and carry. 392 U.S. 398, 20 L. Ed. 2d. 1182.

Accordingly, the FCC's mandatory origination rule far exceeds the "ancillary" test prescribed by this Court in *United States v. Southwestern Cable Company*, 392 U.S. 157, 20 L. Ed. 2d 1001, 88 S.Ct. 1994 (1968). The Court, in upholding the FCC's authority to arrest the expansion of CATV systems to protect broadcasters, carefully restricted the FCC's jurisdiction over CATV "to that reasonably ancillary to the effective performance of the Commission's various responsibilities for the regulation of television broadcasting." This Court expressed "no views as to the Commission's authority, if any, to regulate CATV under any other circumstances or for any other purposes." 392 U.S. 178, 20 L. Ed. 2d 1016(15).

B. The FCC's Rule Violates the Due Process Guaranteed by the Fifth Amendment.

As indicated above, the FCC's mandatory origination rule seeks to change the basic nature of the service offered by CATV systems, and to do so at substantial cost to system operators.

The Court below observed, and the United States does not deny, that the:

> . . . Petitioner is required as a condition to its right to use the captured signals in their existing franchise operation to engage in the entirely new and different business of originating programs. Entering into the program origination field involves very substantial expenditures. Costly equipment must be purchased. Personnel must be employed who are skilled in photography, sound production, program planning and direction, and in performing. Such expense will often prove burdensome because of the limited area the program will reach. See Federal Regulation of

Cable Television: The Visible Hand, Chazen and Ross, 83 Harvard L. Rev. 1820.

This Court in *Frost v. Railroad Commission of the State of California*, 271 U.S. 583, 70 L. Ed. 1101 (1926), invalidated a similar attempted transfiguration by holding that a private carrier is unconstitutionally deprived of his property without due process of law by the State requiring him to become a public carrier in order to secure a permit to use the public highways for transportation purposes. See also *Interstate Commerce Commission v. Oregon-Washington Railroad & Navigation Company*, 288 U.S. 14, 77 L. Ed. 588 (1933).

The *Frost* analogy precludes the FCC from here conditioning the right of persons to continue operating CATV systems by forcing them to assume the burden of program origination.

C. The FCC's Rule Violates the Freedom of Speech Guaranteed by the First Amendment.

The First Amendment to the Constitution provides that "Congress shall make no law . . . abridging the freedom of speech, or of the press . . .".

The FCC's mandatory origination rule preempts critical CATV system capacity which would otherwise be available for public use and, hence, a medium for public expression is unconstitutionally narrowed under the guarantees of the First Amendment.

This Court in *Red Lion Broadcasting Co. v. FCC*, 395 U.S. 367, 390, 23 L. Ed. 2d 371, 389 (24), 89 S.Ct. 1794 (1969), described the First Amendment impact on broadcasting in the following terms:

> . . . It is the right of the viewers and listeners, not the right of the broadcasters, which is

paramount. See *FCC v. Sanders Bros. Radio Station*, 309 U.S. 470, 475, 84 L. Ed. 869, 874, 60 S.Ct. 693 (1940); *FCC v. Allentown Broadcasting Corp.*, 349 U.S. 358, 361-362, 99 L. Ed. 1147, 1152, 1153, 75 S.Ct. 855 (1955); 2 Z. Chafee, Government and Mass Communications 546 (1947). It is the purpose of the First Amendment to preserve an uninhibited marketplace of ideas in which truth will ultimately prevail, rather than to countenance monopolization of that market, whether it be by the Government itself or a private licensee. *Associated Press v. United States*, 326 U.S. 1, 20, 89 L. Ed. 2013, 2030, 65 S.Ct. 1416 (1945); *New York Times Co. v. Sullivan*, 376 U.S. 254, 270, 11 L. Ed. 2d 686, 700, 84 S.Ct. 710, 95 ALR2d 1412 (1964); *Abrams v. United States*, 250 U.S. 616, 630, 63 L. Ed. 1173, 1180, 40 S.Ct. 17 (1919) (Holmes, J., dissenting). "[S]peech concerning public affairs is more than self-expression; it is the essence of self-government." *Garrison v. Louisiana*, 379 U.S. 64, 74-75, 13 L. Ed. 2d 125, 133, 85 S.Ct. 209 (1964). See Brennan, The Supreme Court and the Meiklejohn Interpretation of the First Amendment, 79 Harv. L. Rev. 1 (1965). It is the right of the public to receive suitable access to social, political, esthetic, moral, and other ideas and experiences which is crucial here. That right may not constitutionally be abridged either by Congress or by the FCC.

This Court in construing a First Amendment issue in *Cohen v. California*, ___ U.S. ___, 29 L. Ed. 2d 284, 91 S.Ct. ___ (1971), observed that:

> . . . The constitutional right of free expression is powerful medicine in a society as diverse and populous as ours. It is designed and intended to remove governmental restraints from the arena of public discussion, putting the decision as to what views shall be voiced largely into the hands of each of us, in the hope that use of such freedom will ultimately produce a more capable citizenry and more perfect polity and in the belief that no other approach would comport with the premise of individual dignity and choice upon which our political system rests. See *Whitney v. California*, 274 U.S. 357, 375-377, 71 L. Ed. 1095, 1105, 1106, 47 S.Ct. 641 (1927) (concurring opinion of Brandeis, J.). 29 L. Ed. 2d 293.

The freedom to distribute information is clearly vital to the preservation of a free society. *Martin v. City of Struthers*, 319 U.S. 141, 146, 87 L. Ed. 1313, 1319 (1943). Moreover, the FCC's mandatory origination requirement, which limits public access to CATV system facilities, is in the nature of a prior restraint which infringes the First Amendment. Compare: *New York Times Co. v. United States*, ___ U.S. ___, 29 L. Ed. 2d 822, 91 S.Ct. ___ (1971); *Burstyn v. Wilson*, 343 U.S. 495, 503, 96 L. Ed. 1098, 1107(5), 72 S.Ct. 777 (1952); and *Near v. Minnesota*, 283 U.S. 697, 75 L. Ed. 1357, 51 S.Ct. 625 (1931).

The FCC's mandatory origination rule also infringes upon the CATV operator's First Amendment right to remain silent, *i.e.* not to originate programming. 16 *CJS*, Constitutional Law, Sec. 213(17), p. 1137.

D. The FCC's Rule Conflicts with National Antitrust Policy.

The Sherman Antitrust Act declares that "Every contract, combination in the form of trust or otherwise, or conspiracy, *in restraint of trade or commerce* among the several States . . . is declared to be illegal . . .". 15 U.S.C., Sec. 1. Emphasis supplied.

The FCC is under a duty to administer its regulatory powers with respect to broadcasting in the light of the purposes which the Sherman Act was designed to achieve. *National Broadcasting Company v. United States*, 319 U.S. 190, 222, 87 L. Ed. 1344, 1366, 63 S.Ct. 997 (1943). See also: *Carnation Company v. Pacific Westbound Conference*, 383 U.S. 213, 217, 15 L. Ed. 2d 709, 713(5), 86 S.Ct. 781 (1966); *United States v. Radio Corporation of America*, 358 U.S. 334, 351, 3 L. Ed. 2d 354, 366(11), 79 S.Ct. 457 (1959); *Philco Corporation v. FCC*, 293 F.2d 864 (1961); *Metropolitan Television Company v. FCC*, 289 F.2d 874, 876(3) (1961); and *Mansfield Journal Co. v. FCC*, 180 F.2d 28, 33 (5-6) (1950).

Since the FCC's mandatory origination rule preempts critical CATV system capacity, which would otherwise be available for public use, the rule is in conflict with national antitrust policy which prohibits the restraint of trade or commerce. In other words, the FCC's rule restrains the competitive use of CATV system capacity and, further, provides the CATV operator with an economic incentive to favor his programming over that offered by potential competitors seeking to use the remaining capacity of his system.

This Court in *Northern Pacific Railway Company v. United States*, 356 U.S. 1, 4, 2 L. Ed. 2d 545, 549(1), 78 S.Ct. 514 (1958), described the broad reach of antitrust policy as follows:

> The Sherman Act was designed to be a comprehensive charter of economic liberty aimed at preserving free and unfettered competition as the rule of trade. It rests on the premise that the unrestrained interaction of competitive forces will yield the best allocation of our economic resources, the lowest prices, the highest quality and the greatest material progress, while at the same time providing an environment conducive to the preservation of our democratic political and social institutions. But even were that premise open to question, the policy unequivocally laid down by the Act is competition. And to this end it prohibits "Every contract, combination . . . or conspiracy, in restraint of trade or commerce among the several States."

The Court observed in *Klor's v. Broadway-Hale Stores*, 359 U.S. 207, 213, 3 L. Ed. 2d 741, 745(4), 79 S.Ct. 705 (1959), that:

> . . . the Sherman Act has consistently been read to forbid all contracts and combinations "which 'tend to create a monopoly,'" whether "the tendency is a creeping one" or "one that proceeds at full gallop." *International Salt Co. v. United States*, 332 U.S. 392, 396, 92 L. Ed. 2d 20, 26, 68 S.Ct. 12.

Accordingly, the FCC's rule is unreasonable because it seeks to restrain competition by requiring a CATV operator to increase his use of the system's capacity which, in turn, limits access by the public.

II. STATE REGULATION OF THE LOCAL ASPECTS OF CATV OPERATIONS IS ESSENTIAL TO THE PROTECTION OF THE CONSUMER INTEREST.

The Court in deciding the issues in this case should be careful to preserve the role of the States in regulating the local aspects of CATV operations for the protection of consumer interests.

The Congressional propensity to divide the interstate and intrastate characteristics of a national industry, and to assign the former to Federal regulation and to reserve the latter for State regulation, is consistently reflected in many other areas. More specifically, this regulatory dichotomy is applied to electric companies under the Federal Power Act,[9] to gas companies under the Natural Gas Act,[10] to railroads and motor carriers under the Interstate Commerce Act,[11] and to telephone and telegraph companies

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[9] 16 U.S.C., Sec. 791, *et seq.*, with particular reference to Secs. 824 (b)(c), 824a(f), 824c(f), and 824h. In general, the Federal Power Commission regulates wholesale rates and related facilities and service, and the State commissions regulate retail rates and related facilities and service.

[10] 15 U.S.C., Sec. 717, *et seq.*, with particular reference to Secs. 717 (b)(c), 717a(6, 7), and 717p. In general, the Federal Power Commission regulates "interstate" wholesale rates and related facilities and service, and the State commissions regulate "intrastate" wholesale and all retail rates and related facilities and service. See also Secs. 3, 4 and 5 of the Natural Gas Pipeline Safety Act of 1968 (49 U.S.C.A., Sec. 1672-1674) which apply an analogous regulatory split to the national gas safety program.

[11] 49 U.S.C., Sec. 1, *et seq.*, with particular reference to Secs. 1(2), 1(17)(a), 1(22), 13(2)(3), 13a(2), 302(a)(b), 303(10)(20), and 305. In general, the State commissions regulate the intrastate business of railroads and motor carriers. See also Secs. 205 and 206 of the Federal Railroad Safety Act of 1970 (Public Law 91-458) which permits a State: to adopt more stringent safety regulations than the Federal safety regulations "when necessary to eliminate or reduce an essentially local safety hazard"

(continued)

under the Communications Act.[12] See also: *Head v. New Mexico Board of Examiners in Optometry*, 374 U.S. 424, 10 L. Ed. 2d 983, 83 S.Ct. 1759 (1963); and *California v. Thompson*, 313 U.S. 109, 85 L. Ed. 1219 (1941).

The CATV business possesses all the attributes of a natural monopoly. The supply characteristics of CATV service are quite similar to those of local electric, gas and telephone companies – the traditional public utilities.

The CATV business depends upon a distribution system within the public ways which can only be constructed at substantial cost. The basic distribution system, once constructed, can provide service to additional customers within the area at an extremely low increment of cost. Where the distribution system is owned and controlled by the CATV operator, competition can only arise by a complete duplication of the distribution system already in place and this is practically an insurmountable economical barrier. Moreover, if two competitors construct two distribution systems and begin operation, the service available to the public must carry a double investment and yet there is little opportunity of obtaining improvement in service because of competition. Essentially, both CATV operators would be providing substantially the same television signal product.

There is a well defined public need for CATV service.

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11 (continued) created by interstate railroad operations; and to otherwise conduct a comprehensive safety program covering substantially all interstate railroad operations within the State.

12 47 U.S.C., Sec. 151, *et seq.*, with particular reference to Secs. 152, 153(e)(h), 214(a)(1-3), 221(b) and 410. The Federal Communications Commission regulates interstate message toll calls, and the State commissions regulate intrastate message toll calls and local exchange calls even in instances where the boundaries of the exchange area overlap State lines.

Television is one of the nation's prime information and entertainment resources. Among viewers, television is often found to be addictive. Undoubtedly, many families could tolerate degraded telephone service more easily than they could tolerate poor or limited television reception.

For example, novelist James A. Michener in a recent article entitled "One and a Half Cheers for Progress" which appeared in the *New York Times Magazine* observed that:

> CATV has already given premonitions of the revolution that will be underway when 17 to 75 static-free channels can be piped into every home for a small monthly fee. Researchers have found that in those experimental areas where CATV is now allowed to operate, with only a few channels, families produce the monthly rental even if it means not paying the doctor, the dentist or the grocer. These viewers would rather have clear television reception than health or food.

CATV, of course, enhances our vital television resource by providing improved signal quality, which is particularly important for color transmissions, and by providing a greater variety of programming than would otherwise be afforded by off-the-air reception. CATV typically has achieved a penetration of almost 50% of the homes in the areas served.

The NARUC in recent years has actively encouraged State regulation of the local aspects of CATV operations.

The members of the NARUC, assembled in their Seventy-seventh Annual Convention in New York City on October 2, 1965, unanimously adopted a resolution directing the preparation of a model statute providing for State regulation of

CATV systems as public utilities. *77th NARUC Annual Convention Proceedings,* p. 555 (1965).

The resolution recognized the rapid growth of CATV systems, that they are "endowed with the monopolistic characteristics of public utilities," and that State regulation thereof "is in the public interest because it would protect viewers from exorbitant charges and degraded service."

After consultation with staff members of the Federal Communications Commission and other interested parties, the Model State Community Antenna Television System Act, draft of February 18, 1966, was distributed to the State commissions. *NARUC Bulletin No. 13-1966,* pp. 2-12.

Thereafter, the State of Nevada enacted a statute, patterned largely after the NARUC Model Act, which empowered the Nevada Public Service Commission to regulate CATV systems as public utilities. Nevada Revised Statutes, Sec. 711.010, *et seq.*

A three-judge Federal district court in Nevada on December 2, 1968, upheld the validity of this statute against challenges that it imposed an unconstitutional burden on interstate commerce; that Congress had preempted the field of television communications; and that the statute deprived the plaintiff of its property without due process of law. *TV Pix, Inc. v. Taylor, et al.,* 304 F. Supp. 459.

The court observed that:

> "We do not view the subjects of regulation contemplated by the Nevada statute, *i.e.*, the quality of and the rates and charges for community antenna service, as being of the character demanding national uniformity so that state action is entirely inadmissible. On the contrary, these are subjects which lend themselves naturally

to local control and supervision. National uniformity is probably not a possibility, let alone an acceptable ideal."

This Court on February 2, 1970, summarily affirmed the decision of the three-judge court thereby dispelling any doubt as to the authority of State and local governments to regulate the local aspects of CATV operations. 396 U.S. 556, 24 L. Ed. 2d 746, 90 S.Ct. 49.

This judicial viewpoint expressed above is sound both legally and realistically. Knowledge concerning the legal, technical, financial and character qualifications of the franchise applicant is uniquely within the province of State and local authorities. Similarly, these authorities are best able to determine whether the granting of a franchise is required by the public interest.

Service standards and rate structures necessarily must vary from State to State and even within a single State. Accordingly, State rather than Federal agencies are best equipped to determine the justness and reasonableness of proposed rates and to discern the individual and often unique requirements of differing localities with respect to safe and adequate service and facilities.

The fact that only eight States (*supra*, footnotes 1-8) now regulate the local aspects of CATV at the State level simply means that these aspects are now being regulated at the local level in the remaining States where CATV operations exist.[13] Undoubtedly, as CATV continues to grow there will be an increasing shift of regulatory authority from the local to State levels. This evolutionary process occurred in the regulation of electric, gas and telephone utilities and will occur as to CATV – if permitted.

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13 The Court in *United States v. Southwestern Cable Co.*, 392 U.S. 157, 20 L.Ed. 2d 1001, 88 S.Ct. 1994 (1968), at footnote 15, stated that "some 86% of the (CATV) systems are subject at least to some local regulation."

While the development of State regulation of CATV operations has thus far been slow, the NARUC believes that there will be an acceleration of State regulatory activity in the near future due to the rapid and widespread growth of the CATV industry.

The demand matrix for CATV service is enormous.

Broadcasting Magazine, in its 1971 CATV Directory, reports that over 30.5 million Americans live in communities that are served by CATV systems. It estimates that over 4.5 million homes subscribe to CATV service from 28 hundred systems serving nearly 45 hundred communities.

During the 1970's, the number of CATV households is expected to increase from 4.5 million or 7.6% of the nearly 60 million television households in the United States at year-end 1969 to 26.3 million or 36% of the 72.5 million TV households at year-end 1980, reflecting an average annual growth of 18%.

The revenues from CATV system operations are expected to increase from approximately $213 million in 1968 to over $3.4 billion by 1980, reflecting an average annual growth rate of 26% over the 12-year period.

Although installation fees for CATV service have been discontinued in some cases, most systems still levy a charge of 10 to 25 dollars. There are 30 cable systems, however, that impose installation fees of 50 dollars and up; and one charges 162 dollars and 50 cents.

Monthly fees for CATV service generally are in the 5 to 6 dollar range, although a substantial number of cable systems are now charging 7 to 8 dollars monthly. A few go as high as 9 to 10 dollars a month.

Moreover, an editorial in the Cable News of December 18, 1970, stated that nearly 1,000 CATV systems in the Nation are obsolete and antiquated and should be rebuilt.

It further stated that too many cable operators are not delivering picture quality and in many cases the picture is not acceptable. Comments were directed to those localities where the viewer did not have a choice between over-the-air television and CATV and it emphasized the importance that those cable operators rebuild and improve their systems for delivery of clear acceptable signals or they will get the regulation they are trying to avoid. The Editor chided them for taking money out of these communities for years and putting nothing back in by keeping modern, up-to-date equipment in operation. *NARUC Bulletin No. 6-1971*, p. 9.

The socioeconomic environment in the United States during the 1970's will be favorable to the growth of CATV. Gross national product and personal income will increase significantly during the decade. This increase coupled with an increase in leisure time and educational level of the population, will provide more time, money, and interest in educational and recreational activities. Both of these interests will be partially met through the programming diversity provided by CATV. Moreover, the number of color television sets and multiple television set households will increase significantly during the period, and the householder's expenditure for both color and multiple sets can be greatly optimized through the use of CATV.

During the 1970's, there is likely to be an even greater awareness of the interests and needs of special interest groups, including preschool education, adult education, job training, special religious activities, and medical training for the layman. CATV has the capacity to accommodate these social needs.

In summary, the socioecnomic environment is extremely favorable to the development of CATV during the 1970's. Not only will people have the time and money, but their

interests will become more segmented thus encouraging the greater development of this medium. Furthermore, the demographic trend toward higher incomes, more education, and younger families will have a favorable influence on the potential growth of CATV.

These projections reflect the inexorable march of the CATV industry into a new and growing dimension of public concern.

The involvement of an ever-growing number of consumers with CATV service will inevitably lead to consumer demand for government protection against unreasonable rates and degraded service. Accordingly, such a demand will provide the necessary catalyst for State legislatures to enact appropriate legislation to safeguard the public interest in these matters of local concern.

Therefore, the continued encouragement of State and local regulation is decidedly in the public interest because it keeps government close to the governed and thereby stimulates the prompt and responsive protection of consumer interests by State and local officials.

This approach would utilize the States in their well recognized role of "testing laboratories" of the governmental process, whereby innovation and experiment may be undertaken and later retained or rejected as results dictate. The public interest requires the stimulation of these productive resources.

The FCC is too remote and it does not have the funds or the personnel to adequately regulate the local aspects of CATV and to meet the tremendous consumer protection demand which they pose.

Accordingly, the Court in deciding the issues in this case should not impair the ability of the States to protect the consumer interest in this rapidly unfolding field.

CONCLUSION

For the foregoing reasons, the judgment of the Court below should be affirmed.

Respectfully submitted,

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April 4, 1972